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Iwan Bujang Dara & Anor v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-09(H)-257–09 OF 2015
ABDUL AZIZ ABDUL RAHIM, DAVID WONG AND ABDUL RAHMAN SEBLI JJCA
15 MARCH 2017

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Criminal Procedure — Sentencing — Imprisonment — Accused persons sentenced to 22 years' jail plus 12 strokes of rotan and 12 years' jail plus ten strokes of rotan for respectively committing gang robbery with murder and voluntarily causing hurt — Whether order that jail sentences run consecutively and not concurrently proper as offences were against two different persons although committed during the same transaction — Whether public interest warranted long jail terms although they crushed accused persons' hopes of reformation and return to normal life — Whether sentences of jail and whipping imposed on accused befitted violent nature of crimes committed

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The appellants had pleaded guilty in the High Court to a first charge of committing gang robbery with murder and a second charge of voluntarily causing hurt during the robbery at a house in Bintulu one night in May 2014. The murdered victim was a man; the person injured was his wife. The court sentenced each of the appellants to 22 years' jail and 12 strokes of the *rotan* on the first charge and 12 years' jail and ten strokes of the *rotan* on the second charge. The sentences were ordered to run consecutively. According to the facts of the case, the appellants and four others who are still at large had planned the robbery a week before its execution. They had brought with them towels to mask their faces, knives and *parangs*, and rope and tape to tie up their victims and seal their mouths with. The robbers entered the compound of the house when the wife arrived home in her car. In the scuffle to subdue and tie her up, she was injured. Hearing her screams, her husband rushed to the scene but he was stabbed with a knife several times by the second appellant. The robbers then took various valuable items from the house before fleeing. Although the victims' 16-year-old daughter and her five-year-old sister were in the house at the time and were unhurt, they were traumatised by the event. In their instant appeal against sentence, the appellants submitted that: (a) since the two offences in question took place at the same time and place and for the common object of committing robbery, the jail sentences should have been ordered to run concurrently and not consecutively; and (b) the jail sentences were excessive and crushed any hopes the appellants had to reform and return to normal life.

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Held, dismissing the appeal:

(1) Sentences of imprisonment should not be made to run concurrently where the offences were committed on two or more different victims even though they were committed in the same transaction. In the present case, the two charges were two distinct and separate offences committed against two different victims although committed in the same transaction. Neither offence was subsidiary to the other (see para 28).

(2) The appellants might feel crushed by the long term of imprisonment (34 years in total), but in the larger interests of the public, it was necessary that they were kept away for that period of time to protect the public from their criminal behaviour. As for the sentence of whipping, this court failed to see how the number of strokes (22 in total) imposed was manifestly excessive in all the circumstances of the case. This case involved extreme violence and that fact had to be reflected in the number of strokes the appellants had to be made to suffer (see paras 30–31).

(3) The sentences passed on the appellants were neither wrong in principle nor manifestly excessive. On the contrary, they were fitting to the circumstances of the crimes. For the first offence, the appellants were liable to be sentenced to death by hanging or to jail for up to 30 years and where the punishment was not death they were liable to whipping in addition to imprisonment. For the second charge, they were liable to a jail term of up to 20 years in addition to whipping (see paras 23 & 25).

(4) In violent crimes, such as in the instant case, a deterrent sentence had to be imposed as a matter of principle, even where the offender pleaded guilty at the first available opportunity. The plea of guilty did not automatically entitle the offender to a lesser punishment. It was wrong to be lenient with armed and violent criminals unless there were very strong mitigating circumstances. The public was entitled to be protected from these vile miscreants who violated their right to live peacefully in the safety of their own homes and it was not so protected if unrealistic and disproportionately lenient sentences were passed by the court (see paras 18–19).

(5) The court was not only concerned with the plea in mitigation in passing sentence. No matter how strong the plea in mitigation was in favour of a lenient sentence, the court's overriding consideration has always been, and will always be, the public interest. The court, as the guardian of public interest and the last bastion of justice, must not be seen as a market place for criminals to bargain for leniency on flimsy grounds such as their having to take care of their aged parents and what not. The sentencing courts must not turn their backs on those who had suffered and continue to suffer at the hands of these criminals (see paras 17 & 20).

[Bahasa Malaysia summary

Perayu-perayu telah mengaku bersalah di Mahkamah Tinggi terhadap tuduhan pertama melakukan rompakan berkumpulan dengan membunuh dan tuduhan kedua secara sukarela menyebabkan kecederaan semasa rompakan di sebuah rumah di Bintulu pada satu malam pada bulan Mei 2014. Mangsa yang dibunuh adalah seorang lelaki; orang yang tercedera adalah isterinya. Mahkamah menjatuhkan hukuman setiap perayu 22 tahun penjara dan 12 sebatan rotan atas tuduhan pertama dan 12 tahun penjara dan sepuluh sebatan rotan ke atas tuduhan kedua. Hukuman diarahkan untuk berjalan secara berturut-turut. Mengikut fakta kes, perayu-perayu dan empat orang lain yang masih bebas telah merancang rompakan seminggu sebelum pelaksanaannya. Mereka membawa tuala untuk menutup muka mereka, pisau dan parang, dan tali dan pita untuk mengikat mangsa mereka dan menutup mulut mereka. Perompak-perompak memasuki kawasan rumah apabila si isteri sampai rumah dengan keretanya. Dalam pergelutan untuk mendiamkan dan mengikatnya, si isteri tercedera. Mendengar jeritannya, suaminya berkejar ke tempat kejadian tetapi dia ditikam dengan pisau beberapa kali oleh perayu kedua. Perompak-perompak kemudiannya mengambil pelbagai barang berharga daripada rumah tersebut sebelum melarikan diri. Walaupun anak perempuan mangsa yang berumur 16 tahun dan adik perempuannya yang berumur lima tahun berada dalam rumah pada masa tersebut dan tidak dicederakan, mereka mengalami trauma akibat kejadian tersebut. Dalam rayuan ini terhadap hukuman, perayu-perayu berhujah bahawa: (a) memandangkan kedua-dua kesalahan yang dipersoalkan berlaku pada masa dan tempat yang sama dan untuk objek biasa melakukan rompakan, hukuman-hukuman penjara sepatutnya diarahkan untuk berjalan serentak dan bukan secara berturut-turut; dan (b) hukuman-hukuman penjara adalah berlebihan dan menghancurkan apa-apa harapan untuk perayu-perayu mengubah perangai dan kembali kepada kehidupan biasa.

Diputuskan, menolak rayuan:

(1) Hukuman-hukuam penjara tidak patut dibuat untuk berjalan secara serentak di mana kesalahan dilakukan ke atas dua atau lebih mangsa-mangsa yang berbeza walaupun ia dilakukan dalam transaksi yang sama. Dalam kes ini, kedua-dua tuduhan adalah kesalahan-kesalahan berbeza dan berasingan yang dilakukan terhadap dua mangsa berbeza walaupun dilakukan dalam transaksi yang sama. Tidak satu kesalahan adalah subsidiari kepada yang satu lagi (lihat perenggan 28).

(2) Perayu-perayu mungkin berasa tertekan dengan pemenjaraan tempoh yang panjang (34 tahun jumlah keseluruhannya), tetapi demi kepentingan orang awam, ia adalah perlu bahawa mereka dipenjarakan bagi tempoh tersebut untuk melindungi orang awam daripada kelakuan

jenayah mereka. Berkaitan hukuman sebatan, mahkamah ini gagal untuk melihat bagaimana jumlah sebatan sebanyak 22 keseluruhannya yang dikenakan adalah berlebihan dalam kesemua keadaan kes. Kes ini melibatkan keganasan yang melampau dan fakta tersebut terpaksa dibayangkan dengan jumlah sebatan yang akan dialami oleh perayu-perayu (lihat perenggan 30–31).

(3) Hukuman-hukuman yang dijatuhkan ke atas perayu-perayu tidak salah di atas prinsip dan juga tidak berlebihan. Sebaliknya, ia sesuai kepada keadaan jenayah-jenayah tersebut. Bagi kesalahan pertama, perayu-perayu boleh dijatuhkan hukuman mati atau dikenakan hukuman penjara sehingga 30 tahun dan di mana hukuman adalah bukan hukuman mati mereka boleh disebat sebagai tambahan kepada pemenjaraan. Bagi tuduhan kedua, mereka boleh dikenakan hukuman penjara sehingga 20 tahun dan sebagai tambahan kepada sebatan (lihat perenggan 23 & 25).

(4) Dalam jenayah-jenayah yang ganas, seperti kes ini, hukuman tegar harus dikenakan sebagai perkara prinsip, walaupun di mana pesalah telah mengaku bersalah pada peluang pertama yang ada. Pengakuan bersalah tidak secara automatik memberi hak kepada pesalah untuk hukuman yang lebih ringan. Ia adalah salah untuk bersikap lembut terhadap penjenayah-penjenayah yang bersenjata dan ganas kecuali terdapat keadaan pengurangan yang kukuh. Orang awam berhak untuk dilindungi daripada orang-orang jahat ini yang telah mencabuli hak mereka untuk hidup secara damai dalam keselamatan rumah mereka sendiri dan ini adalah tidak dilindungi jika hukuman-hukuman ringan tidak realistik dan tidak seimbang dijatuhkan oleh mahkamah (lihat perenggan 18–19).

(5) Mahkamah bukan sahaja mengambil berat dengan rayuan supaya hukuman diringankan terhadap hukuman yang dijatuhkan. Tidak kira betapa kukuhnya rayuan supaya hukuman diringankan memihak kepada hukuman lebih ringan, pertimbangan utama mahkamah selalunya adalah, dan akan sentiasa untuk kepentingan awam. Mahkamah, sebagai penjaga kepentingan awam dan benteng pertahanan keadilan terakhir, tidak boleh dilihat sebagai tempat untuk penjenayah tawar menawar bagi kelonggaran atas alasan yang tidak kukuh seperti untuk menjaga ibubapa mereka yang dah tua dan sebagainya. Mahkamah yang menjatuhkan hukuman tidak boleh berpaling kepada yang telah menderita dan berterusan menderita di tangan penjenayah-penjenayah ini (lihat perenggan 17 & 20).]

Notes

For cases on imprisonment, see 5(3) *Mallal's Digest* (5th Ed, 2015) paras 4599–4612.

Cases referred to

Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534; [2004] 2 CLJ 572, CA (folld)
Gek Sing a/l Kaliappan v PP [1999] 6 MLJ 641, HC (folld)
Prabah Sinnathamby & Anor v PP [2013] 1 CLJ 873, HC (folld)
PP v Jessica Lim Lu Ping & Anor [2004] AMR 239, HC (folld)
PP v Mok Chin Fan & Ors [2015] 6 MLJ 857; [2015] 5 CLJ 52, CA (folld)
PP v Yap Huat Heng [1985] 2 MLJ 414 (refd)
S Samdaran a/l Sivasamy v PP [2015] 3 MLJ 391, CA (folld)
Saizatunuhiddin Ab Rashid v PP [2014] 1 LNS 985 (folld)
Vaitos v R (1982) 4 ACR 238 (refd)

Legislation referred to

Criminal Procedure Code s 183A(1)

Appeal from: Bintulu Criminal Trial No BTU-45–1/1 of 2015 (High Court, Bintulu)

Ranbir Singh Sangha (Ranbir S Sangha & Co) for the appellants.
Amir bin Nasruddin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abdul Rahman Sebli JCA:

[1] In the High Court at Bintulu, Sarawak, the two appellants, both Indonesians from Kalimantan, were jointly charged with two offences, one for gang robbery with murder and the other with voluntarily causing hurt while committing robbery. The murdered victim was the husband whilst the injured victim was his wife. The charges against them were as follows:

First Charge

> Bahawa kamu bersama-sama dengan empat orang lain yang masih bebas pada 20.05.2014, jam lebih kurang 10.15 malam, di No SS2/4 ABF Housing Tanjung Kidurong, Bintulu, dalam daerah Bintulu, dalam negeri Sarawak, telah melakukan rompak berkumpul bersesama enam orang dan pada melakukan rompak berkumpul tersebut telah membunuh *LAU KAH TECK (L) (KPT: 660214-13-5255)* dan dengan itu kamu telah melakukan sesuatu kesalahan yang boleh dihukum di bawah Seksyen 396 Kanun Keseksaan.

Second Charge

> Bahawa kamu bersama-sama dengan empat orang yang masih bebas pada 20.05.2014, jam lebih kurang 10.15 malam, di No SS2/4 ABF Housing Tanjung Kidurong, Bintulu, dalam daerah Bintulu, dalam negeri Sarawak, telah melakukan rompak dan dengan sengaja menyebabkan cedera kepada *MARY TU TUANG NGOH (P) (KP: 661127-13-5566)* dan dengan itu kamu telah

melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 394 Kanun Keseksaan.

[2] They pleaded guilty to the charges and were each sentenced to 22 years imprisonment and 12 strokes of the *rotan* for the first charge and 12 years imprisonment and ten strokes of the *rotan* for the second charge. The sentences were ordered to run consecutively. They were dissatisfied with the sentence, hence the present appeal. Twelve grounds were advanced on their behalf but having heard arguments by both sides, we found none of them to be of any substance and we unanimously dismissed the appeal. These are our grounds.

[3] These despicable crimes were committed by a gang of six Indonesian nationals who in the course of committing the robbery murdered the husband and injured his wife. Before we get into the details of how the murder and robbery was carried out, perhaps we should just state the short narrative. On 20 May 2014, at about 10.15pm, while the deceased's 16 year old daughter was with her younger sister in her room upstairs, she was alarmed by her mother's scream downstairs.

[4] They both rushed down to investigate and were shocked to find their parents lying in the living room stained with blood. She then called the police and ambulance. It is obvious that her father had been stabbed to death and was bleeding profusely. The photos at pp 120–122 of the record of appeal show considerable amount of smeared blood on the floor of the living room after the deceased's body had been removed by the police.

[5] Unbeknown to the deceased and his family, their fate was sealed when the plan to rob them was hatched by the robbers about one week before the actual robbery on 20 May 2014. This was disclosed by the first appellant in his cautioned statement, which was admitted and marked as exh D1 in the court below. This is what he said:

> Pada 15.5.2014 jam lebih kurang 7.00 pagi saya telah menaiki sebuah van sewa pergi ke Bintulu dengan tambang RM10. Sesampai di pasar Bintulu saya menaiki semula van sewa pergi ke kawasan Air Merin dengan tambang RM2. Lebih kurang jam 9.30 pagi saya sampai di Air Merin saya ada melihat rakan-rakan yang saya kenal seperti Awin dan Kipli bersama 3 orang lagi yang saya tidak kenal. Awin telah memperkenalkan saya kepada tiga orang tersebut dengan panggilan Ilan, Taris dan Ruli. *Selepas itu Ilan terus memulakan perbincangan tentang kerja yang hendak ditawarkan kepada kami semua. Ilan memberitahu kami yang dia ada membuat rancangan hendak merompak sebuah rumah di jalan pantai ABF berdekatan dengan gereja. Setelah mendengar penerangan yang terperinci daripada Ilan, kami pun semua bersetuju. Kemudian itu Ilan ada memberitahu kepada kami berlima bahawa pada 20.5.2014 jam lebih kurang 6.30 ptg supaya kita berkumpul di Air Merin sebelum bergerak ke tempat yang hendak dirompak*. (Emphasis added.)

[6] And it was part of the plan that they were to arm themselves with knives and *parangs* other than to bring with them cellophane tapes to seal the victims' mouths, rope to tie them up and towels to cover the lower half of their own faces. This is what the first appellant said in his statement:

> Pada jam 8.30 malam kami bergerak dari pantai ABF menuju ke semak bersebelah rumah mangsa yang jarak perjalanan memakan masa 10 minit berjalan kaki. Semasa kami berada di dalam semak tersebut Taris ada menyerahkan beg galas berwarna hitam kepada Ilan dan terus di buka oleh Ilan yang di dalamnya saya nampak ada senjata berupa parang dan pisau. *Selepas itu Ilan pun membahagi parang, pisau, selotap, tali dan tuala penutup mulut kepada kami. Ilan membawa parang, Taris membawa parang dan selotap kuning, Kipli dan Ilan membawa pisau pemotong sayur, Ruli membawa samurai pendek dan selotap hitam sebanyak 2 gulung, tali berwarna hijau dan beg galas berwarna hitam yang kosong.* Taris juga memberi kami setiap seorang tuala berwarna hitam, biru dan putih. Saya memakai penutup tuala penutup mulut berwarna biru, Taris tuala berwarna hitam, Ilan tuala berwarna putih, Awin tuala berwarna hitam, Kipli tuala berwarna hitam sementara Ruli tidak menggunakan sebarang tuala penutup mulut. (Emphasis added.)

[7] Their nefarious plan was put into action when the deceased's wife arrived home in her car at around 10pm on 20 May 2014. As to what happened next on that frightful night, we can do no better than to reproduce what the second appellant himself disclosed in his cautioned statement, which was admitted and marked as exh D2 in the court below. This is what he said:

> Jam lebih kurang 10.00 malam, kami ke rumah Cina tersebut melalui jalan semak dan berhenti tidak jauh dari rumah itu. *Apabila kami nampak sebuah kereta masuk ke kawasan rumah itu dan buka pintu pagar itu, kami meluru masuk ke dalam kawasan pagar rumah itu. Ruli yang jalan dahulu dengan membawa satu bilah samurai pendek dan diikuti oleh Ilan yang memegang parang pendek, yang lain saya tidak ingat memegang apa dan saya memegang pisau sayur di tangan sebelah kiri dan membawa pita pelekat warna hitam.*
>
> *Apabila sampai dalam kawasan pagar rumah Cina itu, saya dapati seorang perempuan Cina telah keluar dari kereta. Perempuan Cina itu cakap 'Apa lu mau'. Awin terus menangkap perempuan itu dan saya juga menarik rambutnya untuk menekannya ke lantai diluar rumah itu.* Pada masa itu, Awin telah bertanya kepada saya 'Bunuh kah', saya telah memberitahu Awin, 'jangan'. Saya percaya muka perempuan Cina itu terkena pisau sayur saya pada masa saya menarik rambutnya. Setelah mengawal perempuan itu, saya nampak satu perempuan kecil keluar dari bilik tetamu dan saya terus tangkap perempuan kecil itu. Saya terus membawa perempuan kecil itu ke dalam bilik tetamu takut terjadi apa-apa hal nanti. Pada masa itu, Ilan, Ruli dan Taris sedang mencari barang dalam bilik di tingkat bawah rumah itu. *Semasa saya sedang pegang anak perempuan kecil itu, bapa perempuan kecil itu telah turun dari tangga rumahnya sambil berteriak. Saya terus lepaskan perempuan kecil itu dan menyerang bapa perempuan kecil itu dengan pisau sayur yang dipegang dengan tangan kiri saya. Saya telah menikam beberapa kali ke badannya dan apabila bapa perempuan itu jatuh, saya melarikan diri keluar dari rumah itu* dan dapati Awin dan Kacong sudah berada diluar pagar rumah Cina itu. (Emphasis added.)

[8] The second appellant did not mention that the deceased's wife was tied up during the robbery but from the statement of the first appellant, it is obvious that she was. This is what the first appellant said:

> Awin terus menangkap isteri mangsa yang ketika itu baru keluar dari kereta dan di bantu oleh Ilan dan Taris kerana isteri mangsa meronta-ronta di tempat letak kereta di depan rumah mangsa. Sementara saya, Kipli dan Ruli terus masuk ke dalam rumah tersebut dan saya ada melihat seorang budak perempuan turun dari tangga di dalam rumah tersebut. *Belum sempat saya masuk lebih dalam di rumah tersebut Ilan telah panggil saya dan mengarahkan saya supaya menutup mulut dan mengikat isteri mangsa.* Bila saya keluar dari rumah tersebut dan terus pergi di parking kereta saya melihat isteri mangsa mengalami kecederaan dan melihat darah di lantai. (Emphasis added.)

[9] Before making their escape, the robbers took the following items from the house:

(a) an unknown amount of cash;

(b) a handbag belonging to the deceased's wife;

(c) a Nokia handset belonging to the deceased;

(d) a Nokia handset belonging to the deceased's wife; and

(e) a pair of sunglasses.

[10] The crime was vividly caught on CCTV. From the still pictures downloaded from the CCTV footages at pp 62–81 of the appeal record, we can imagine the horror of the attack. The two photos at p 64 show one of the robbers accosting the deceased's wife shortly after she got out of her car; the photos at pp 68–69 show another robber pulling a little girl by the hand and then holding her tightly in his arms at the porch; the photos at pp 79–80 also show a girl being held by another robber in the living room; the photos at pp 69–73 show the second appellant pulling the deceased's wife by the hair and dragging her on the floor of the porch; the photos at pp 113–116 show the deceased's wife's blood smeared on the floor of the porch; the photos at pp 75–76 show a masked assailant menacingly threatening the deceased with a knife at the porch; the photo at p 81 shows the living room and the second appellant raising his left hand to stab the deceased, who appears to be losing his balance.

[11] The post mortem that was conducted by Forensic Pathologist Dr Norliza bt Ibrahim found the following injuries on the deceased's body:

(a) a 'V' shaped stab wound on his right chest;

(b) a stab wound on his left shoulder;

(c) an abrasion wound on the back of his right shoulder;

(d) a scratch wound on his lower back;

(e) a scratch wound on his right inner arm;

(f) a laceration wound on his inner right arm;

(g) a gash wound on his right leg;

(h) a gash wound on his right knee;

(i) a scratch wound on his right leg; and

(j) a gash wound on the ankle of his right leg.

[12] It is obvious that the unarmed deceased was viciously attacked by the second appellant at least ten times with the knife. According to the pathologist, the injury that caused the deceased's death was the stab wound to his right chest which penetrated the vein of his left lung. She also mentioned in her report that the injuries were consistent with defensive injuries.

[13] As for the deceased's wife, the medical report prepared by Dr Yasothai a/p Sahadeevan of the Bintulu Hospital shows that she sustained multiple lacerations on the right side of her face, left shoulder, right hand and right thigh. All these injuries were caused by a sharp object.

[14] The first appellant was arrested two weeks after the murder and robbery, ie on 7 June 2014 in Dalat, Sarawak whilst the second appellant was arrested on the same day in Sibu, Sarawak. The other four felons are still at large.

[15] In his plea in mitigation before sentencing, this is what the first appellant had to tell Lee Heng Cheong J. He was 26 years old at the time of the offence, the eldest of three children and that it was his responsibility to partly support his younger siblings. His father was 55 years old and had remarried and that his mother passed away in early 2013. He studied in Indonesia until early 2004 when he stopped schooling due to financial difficulties. Then he entered Sarawak in 2008 to look for a job. He was unemployed and still looking for a job when he committed the offences.

[16] The plea in mitigation by the second appellant was as follows. He was 24 years of age at the time of the offence, the eldest of eight children and is married with two children, a boy and a girl. After completing school he worked as a hard labourer in Indonesia. He entered Sarawak in 2013 and worked as a labourer. He frequently entered Sarawak to send essential goods to his family in Sambas, Indonesia.

[17] It was the usual plea for the court to temper justice with mercy by those who showed no mercy to the victims of their crime. How ironic. But the court is not only concerned with the plea in mitigation in passing sentence. No matter how strong the plea in mitigation is in favour of a lenient sentence, the court's overriding consideration has always been and will always be the public interest.

[18] In violent crimes such as the ones committed by the appellants, a deterrent sentence must as a matter of principle be imposed, even where the offender pleads guilty at the first available opportunity. As this court said in *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534; [2004] 2 CLJ 572, the plea of guilty does not automatically entitle the offender to a lesser punishment.

[19] It is wrong to be lenient with armed and violent criminals unless there are very strong mitigating circumstances. The public is entitled to be protected from these vile miscreants who violate their right to live peacefully in the safety of their own homes and it is not so protected if unrealistic and disproportionately lenient sentences are passed by the court.

[20] The court as the guardian of public interest and the last bastion of justice must not be seen as a market place for criminals to bargain for leniency on such flimsy grounds as having to take care of their aged parents and whatnot. The sentencing courts must not turn their backs on those who suffered and continue to suffer at the hands of these criminals.

[21] While it is true that what is done cannot be undone and that life must go on as some very wise men often tell us, the court must also take into consideration the plight of the victims whose lives are forever changed for the worse by these purveyors of pain and suffering.

[22] The deceased's wife, who herself was physically assaulted during the robbery and lucky indeed to be alive, had given an impact statement pursuant to s 183A(1) of the Criminal Procedure Code which the learned judge had duly taken into consideration. We reproduce verbatim and in full below what she had to say on the impact the murder of her beloved husband had on her. We cannot blame her for being emotional, not after what had befallen her and her family:

> Yes. After the incident ie the murder of my late husband, my whole family suffer trauma. We seem to be so helpless and angry. We are wondering why this incident happened to us and we did not do anything wrong and why we have to be punished. My late husband came from a very poor family. His parents are rubber tappers and pepper planters. During his young age he had to assist his family after school in their farms. Even though he had financial difficulties he still managed to graduate with

first class honours in Civil Engineering. Due to his excellence in academic, he was offered to study in England to get his Bachelor Degree in Civil Engineering. However due to his financial problems he was not able to further his studies in England. Then he started to work as a Timber Grader in Sabah with a monthly income of RM617.00. In the year 1990, he came to know a sub-contractor and later he worked with this sub-contractor. Then he opened his own company named Power Mac Enterprise. Due to his efficiency in his work, a lot of companies approached him to do their project works. He was a man that really looked after his employees. He would try his best to help his employees for example he lent money to them if they were in financial difficulties as he knew very well that it was difficult to do anything without money and it was learned from his own experience.

He also supported financially his two employees' children to further their studies. One of them is at Institut Pengajian Guru and the other two are at University. I came to know this matter after the death of my late husband and being informed by these children. He never told us about this.

After his death, my whole family was in trauma and helpless especially my youngest daughter aged 5 years old. She always has nightmare and told us that 'we have to save our father' because someone try to kill her father. He was bleeding profusely. When she was awake, she will ask me 'why a good man like my father being killed by somebody?'. She started to recall the incident and say that 'Why my father look at me and he was in a pool of blood'. I don't know how to answer her because she was still young. I knew why the father was looking at her at that time. She was still young and the father cannot bear to leave her as an orphan and he loves her very much. My late husband ever mentioned that he would turn 70s when this youngest daughter gets married. And he imagined the time when he passed the hand of his youngest daughter to the bridegroom. He was just like an old man or a grandfather entrusted his little grand daughter to the bridegroom. He doesn't want to die so soon because he wants to see his children growing up.

After his death, whatever his promises with the children will no longer exist. He even promised my eldest daughter to work in his company after she graduated her diploma so it was impossible now and my eldest daughter has to plan her own future herself. Even though her result was not satisfactory, she has to face her own future alone. My second eldest daughter could not further her studies even though her father had looked for the school for her.

After his death we also suffered financial difficulties. At that time his current five projects had to be stopped. One of his projects, we have to compensate RM147,384.23. I am merely a teacher so I do not know how his projects were carried out and this amount RM147,384.23 is a very large amount to me and I do not know how to pay this amount. My late husband had 49 workers including 33 contract workers and they were unemployed and they were nearly starved. They lost their rice bowl including my brother-in-law. My sister-in-law asks for my assistance but I don't have anything to help them. I was pushed by the site managers to solve the problems.

Due to these problems hanging on my head, I met an accident on 29.6.2014. My car was damaged. My youngest daughter and I were injured. In the spur of moment I was telling myself why I was not dead. If I died at that time all the problems were

> gone. Now I'm a widow and according to Chinese belief I bring bad luck to others. They don't allow me to go to their house and they are afraid that I will bring bad luck to them. When I was in this position, a lot of friends left me. I was asking myself whether I can carry on with this type of life.
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> Because of some of the newspaper reports that my late husband owes money, people look down on my children. Even now they are still have this sort of thinking and I'd like to clarify that my husband did not owe anybody any money. My husband loved Bintulu but now Bintulu becomes a nightmare to us. Now my family is a broken family. Whenever we talk about my late husband among ourselves, we only cry. My youngest daughter always asks me why the father slept at the graveyard and did not go home. My children are still teenagers and now there is no one to guide them.

[23] What could possibly mitigate the crimes committed by the appellants? We have searched our conscience and could not find any. There is no question that the appellants had committed a very serious offence. For the first offence, they were liable to be sentenced to death by hanging or to imprisonment which may extend to 30 years and where the punishment was not death, they were also liable to whipping in addition to imprisonment. For the second charge, they were liable to imprisonment for a term which may extend to 20 years and were also liable to whipping.

[24] Having regard to the extent of the appellants' involvement in the gang robbery which resulted in the violent death of an innocent man and injury to his wife, not to mention the trauma caused to their two young daughters who were present in the house when the atrocities were carried out and who must have been horrified by what was happening, we found nothing wrong with the sentence passed by the learned judge.

[25] The sentence is neither wrong in principle nor manifestly excessive. On the contrary we found it to be fitting to the circumstances of the crime. In fact the second appellant should not be complaining about the sentence at all as he was the one who stabbed the deceased to death and causing injury to his wife.

[26] The principle on appellate intervention in matters of sentencing is too well established for us to belabour ourselves with the authorities. Suffice for us to say that the mere fact that we might have passed a different sentence is not a valid ground for interfering with the sentence passed by the lower court.

[27] Be that as it may and in deference to learned counsel, we shall consider his point that since there is a nexus between the first offence and the second offence in that they took place at the same time, place and for the common object of committing robbery, the custodial sentence should be concurrent instead of consecutive, relying on the following cases: *Public Prosecutor v Jessica Lim Lu Ping & Anor* [2004] AMR 239; *S Samdaran a/l Sivasamy v Public*

Prosecutor [2015] 3 MLJ 391; *Prabah Sinnathamby & Anor v Public Prosecutor* [2013] 1 CLJ 873; *Gek Sing a/l Kaliappan v Public Prosecutor* [1999] 6 MLJ 641; *Bachik bin Abdul Rahman v Public Prosecutor*; *Public Prosecutor v Mok Chin Fan & Ors* [2015] 6 MLJ 857; [2015] 5 CLJ 52 and *Saizatunuhiddin Ab Rashid v Public Prosecutor* [2014] 1 LNS 985.

[28] The view that we take on the point raised by learned counsel is that sentences of imprisonment should not be made to run concurrently where the offences were committed on two or more different victims even though they were committed in the same transaction. In the present case, the offence of murdering the deceased while committing gang robbery ('the first charge') and the offence of voluntarily causing hurt to his wife while committing robbery ('the second charge') are two distinct and separate offences committed on two different victims although committed in the same transaction. Neither offence is subsidiary to the other. In *Public Prosecutor v Yap Huat Heng* [1985] 2 MLJ 414 Shaik Daud J (as he then was) had said this at p 416:

> Where two or more distinct offences had been committed, sentences of imprisonment should not be made to run concurrently. It should only be made concurrent when an offender had been convicted of a principal and subsidiary offence. In all other cases sentences should be made to run consecutively.

[29] The other question posed for our consideration was whether the length of the custodial sentence passed on the appellants was crushing to their hopes of reformation and a return to a desirable life. In *Bachik Abdul Rahman*, Augustine Paul JCA (as he then was) quoted with approval the following passage in the judgment of O'Brian J in *Vaitos v R* (1982) 4 ACR 238:

> I have some difficulty appreciating the concept that a richly deserved sentence, not manifestly excessive, should be disturbed because the person upon whom the sentence is imposed may feel crushed by it. It is quite true that the applicant has to face a very long term of imprisonment before he will be released and because he is a comparatively young man, many of the best years of his life will be spent in custody. However, from the community point of view, his detention for a very substantial period is necessary to protect females from his criminal behavior.

[30] The appellants may feel crushed by the long term of imprisonment (34 years in total) imposed by the learned judge, but in the larger interest of the public, it is necessary that they be kept away for that period of time to protect the public from their criminal behavior.

[31] As for the sentence of whipping, we do not see how the number of strokes (22 in total) imposed by the learned judge can be considered as manifestly excessive in all the circumstances of the case. This case involved extreme violence and that fact must be reflected in the number of strokes that the appellants must be made to suffer.

[32] It was for all these reasons that we dismissed the appellants' appeal against sentence.

Appeal dismissed.

Reported by Ashok Kumar